IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 10298 of 1997**

Between:

Borige Someswara Rao, S/o. B.Seeta Rama Swamy.
Temburu Road, Tekkali,
Srikakulam.

..... PETITIONER

**AND**

**1** The Dist. Collector,
Srikakulam.
2 The Revenue Divisional Officer,
Tekkali, Srikakulam.
3 The Mandal Revenue Officer,
Tekkali, Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction or writ more particularly one in the nature of writ of mandamus declaring the action of the respondents in not issuing any notice to the petitioner before attempts to acquire to acquire land to an extent of Ac.1-48 cents in S.No.60-1D situated at Raghunathapuram Village (Old) presently known as Tekkali, Srikakulam Dist., as illegal, bad, contrary to principles of natural justice and offends Article 14, 21 and 300-A of the Constitution of India.

Counsel for the Petitioner: Mr.Vijay Kiran, Advocate representing
Mr.J.Venugopal Rao

Counsel for the Respondents : GP FOR REVENUE & GOVERNMENT
PLEADER FOR L.A.

The Court made the following :

**ORDER:**

Heard Sri Vijay Kiran representing Sri J.Venugopal Rao, the learned Counsel for the writ petitioner and also the learned Government Pleader for Land Acquisition and also the learned Government Pleader for Revenue.

The twin questions which had been argued in elaboration by the respective Counsel are (1) Whether the land acquisition proceedings are vitiated for non-issuance of the notice to the writ petitioner under Section 9(3) of the Land Acquisition Act, 1894, hereinafter referred to as “Act” for the purpose of convenience and (2) Whether the land claimed by the writ petitioner under the sale deed and the land acquired can be said to be one and the same in the light of the specific stand taken by the respondents in the counter affidavit. The respective Counsel also placed reliance on certain decisions while making their submissions.

The Writ Petition is filed by the petitioner for a writ of mandamus declaring the action of the respondents in not issuing notice before

attempting to acquire the land of the petitioner to an extent of Acs.1-48 cents in S.No.60-1D of Raghunathapuram village (old), presently known as Tekkali, Srikakulam District as illegal, bad, contrary to principles of natural justice and offending Articles 14, 21 and 300-A of the Constitution of India and to pass such other suitable orders.

It is averred that the writ petitioner is the owner of the wet land of an extent of Acs.1-48 cents in S.No.60/1D of Raghunathapuram village which he had purchased by virtue of a registered sale deed dated 4-3-1995. It is also stated that the writ petitioner is a physically handicapped person and the Government of India provided a Telephone booth to him in the year 1992 under the Physically Handicapped quota and the petitioner has been cultivating these lands by engaging coolies and the land is a double crop wet land. It is further averred that the petitioner came to know from the villagers that the respondents served a notice under Section 9(1) of the Act on his vendor who refused to receive the same. It is said that the writ petitioner made a written objection dated 22-3-1997 to the respondents by Registered Post with Acknowledgement Due objecting to the acquisition of his agricultural double crop wet land in S.No.60/1D and despite the objections the respondents again issued notice under Section 9(3) of the Act to his vendor. It is also stated that the petitioner is a small farmer and hence his lands cannot be acquired.

In the counter affidavit filed by the respondents, specific stand was taken that the subject matter of acquisition is S.No.60/1-I but not 60-1D as contended by the writ petitioner. The purchase of the specified acquired land by the writ petitioner had been specifically denied. It is averred that the land in S.No.60/1-I was proposed for acquisition for providing house sites to weaker sections people and the notification under Section 4(1) of the Act was published locally on 5-10-1994 and in Andhra Prabha on 12-9-1994 and in Andhra Bhoomi on 4-9-1994. It is further averred in the counter affidavit that during the enquiry under Section 5-A of the Act the vendor Borigi Chandrasekhararao s/o. Venkataramana admitted on 10-10-1994 to give his land under land acquisition provided compensation was fixed at Rs.1,00,000/- per acre. It is further stated that the vendor fully knowing that the land was proposed for acquisition had sold away his land to the petitioner who is none other than his cousin brother much after the enquiry under Section 5-A of the Act. It is further stated that the writ petitioner attended even the award enquiry on 27-3-1996 and gave statement objecting to the land acquisition on the plea that he is a small farmer. It is stated that it may be a fact that the petitioner is a small farmer having Acs.1-48 cents but he purchased the land fully knowing about the land acquisition only with a view to avoid land acquisition proceedings and to put a hurdle and hence his action is not bona fide. It is further stated that Award No.6/97-98 has been passed on

20-9-1997 for an amount of Rs.4,71,559/- in favour of land owners including the petitioner's land in S.No.60/1-I for an extent of Hect. 0-60-0 or Ac.1-48 cents at Rs.1,22,636/- as per Rules. As the ownership of the lands is under Court dispute before the Hon'ble High Court in S.A.No.569/91, the amount awarded was ordered to be kept in Civil Court under Section 30 of the Act. Further a specific stand was taken that the land acquired was wrongly mentioned as S.No.60/1D which is not correct and the Writ Petition filed in relation to an irrelevant survey number is not maintainable.

As already referred to supra, submissions at length were made in relation to both the aspects. On a careful reading of the counter affidavit, the stand of the respondents is not specific and clear. No doubt it is specifically averred that the survey number in relation to which the Writ Petition is filed is not the survey number in which the land had been acquired and there appears to be some mistake. But however specific stand had been taken that the original owner had executed the sale deed in favour of the present Writ Petition only with a view to avoid the land acquisition proceedings and the writ petitioner also had attended the award enquiry and raised his objection on the ground that he is a small farmer. Be that as it may, the fact remains that the respondents had taken specific stand in the counter affidavit that S.No.60/1D at Raghunathapuram village (old) at present Tekkali, Srikakulam District had not been acquired.

The question which in fact had been argued at length is that there was no notice to the writ petitioner under Section 9(3) of the Act and inasmuch as notice under Section 9(3) of the Act being mandatory, the non-compliance thereof would vitiate the proceedings and the proceedings are liable to be quashed.

The petitioner had purchased the property of an extent of Acs.1-48 cents in S.No.60/1D as aforesaid on 4-3-1995 and it is averred that the petitioner has been in possession and enjoyment of the said land from the date of purchase. Specific stand was taken that no notice had been served on the writ petitioner at any point of time and despite the objections raised by him, it appears an attempt was made to serve notice on his vendor only and not on the writ petitioner. As already stated supra, the notification under Section 4(1) of the Act was published locally on 5-10-1994 and in Andhra Prabha on 12-9-1994 and in Andhra Bhoomi on 4-9-1994 and during the enquiry under Section 5-A of the Act, the vendor of the petitioner on 10-10-1994 admitted to give his land under land acquisition, provided the compensation is fixed at Rs.1,00,000/- per acre. The registered document in favour of the writ petitioner is dated 4-3-1995 which is subsequent to the issuance of notification under Section 4(1) of the Act. The specific stand taken by the respondents is that this action is not bona fide and only with a view to avoid the land acquisition proceedings this document was brought into existence and hence it

cannot be said that the land acquisition proceedings are vitiated in any way.

Section 9 of the Act deals with **Notice to person interested** and sub-section (3) of Section 9 reads as hereunder:

> "The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate."

In **THE CLASS IV EMPLOYEES HOUSE BUILDING SOCIETY Vs. TANUBODDI VENKATAPPA REDDY AND OTHERS** a Division Bench of this Court while considering the effect of non-compliance with the provisions of Section 9(3) of the Act had arrived at a conclusion that in respect of persons interested in the land, if the non-service is due to mere ignorance than willful perversity, the award is bona fide and cannot be set aside. It was further held that in a case where it is positively known and believed that a person is an occupier of the land and so interested in the land, the obligation to serve a notice under Section 9(3) of the Act is absolute and failure to serve a notice on such Person will amount to willful perversity and the subsequent proceedings cannot be considered bona fide and should be held to be colourable and therefore inoperative and on the other hand as far as persons interested in the land are concerned, an obligation is cast if the Collector knows or believes that there are

such persons. If non-service of the notice is due to mere ignorance of the fact of his having so known or believed than to willful perversity, then the award would be bona fide and the possession of the land cannot be disturbed. In **V.K. DURGA Vs. DISTRICT COLLECTOR** it was held that notice under Section 9(3) of the Act is mandatory and the notice thereunder is an integral and essential part of the land acquisition proceedings. In **UPPALAPATI KRISHNA MURTHY Vs. GOVERNMENT OF A.P. AND OTHERS** where the petitioner was the enjoyer of the site under acquisition wherein he is running a petrol bunk and it is within the knowledge of the Land Acquisition Officer, it was held that failure to give notice under Section 9(3) of the Act to the petitioner vitiates the acquisition.

In the present case, there is no dispute or controversy that the writ petitioner is a subsequent purchaser after the initiation of the acquisition proceedings. The object of Section 9(3) of the Act is to give notice of the intention to acquire the land and an opportunity to all the persons interested in the land to put forward their claims. No doubt, submissions at length were made relating to nature of the transaction in question, the sale in favour of the subsequent purchaser, writ petitioner, on the ground that the same is not a bona fide transaction and was viewed with a view to defeat the land acquisition proceedings and nothing more. The words “…on the

occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested…" in Section 9(3) of the Act would assume some importance. The expression "person interested" is defined in Section 3 of the Act as hereunder :

> "In this Act, unless there is something repugnant in the subject or context, the expression "person interested" includes all persons claiming an interest in compensation to be made on account of acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

I n **GUNWANT KAUR Vs. BHATINDA MUNICIPALITY** the Apex Court at para-17 held as hereunder :

> " It was urged by Mr.Hazarnavis on behalf of the Municipal Committee, Bhatinda, that the three appellants were purchasers of the lands claimed by them after the notification under Section 4 was issued and they had no right to challenge the issue of the notification. If, however, the notification under Section 4 was vague, the three appellants who are purchasers of the land had title thereto may challenge the validity of the notification. The appellants have spent in putting up substantial structures considerable sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification under Section 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands".

Reliance also was placed on **HINDU KANYA MAHA VIDYALAYA Vs. MUNICIPAL COMMITTEE** and also **HIMALAYAN TILES AND MARBLE (P) LTD. Vs. FRANCIS VICTOR COUTINHO** to throw some light on the aspect of "person interested". In

**SEETHALAKSHMI AMMAL Vs. THE STATE OF TAMIL NADU** a Full Bench of Madras High Court while dealing with the aspect of "person interested" held :

> "Since the ownership is not transferred until possession is taken under Section 16 and there is no absolute vesting of the land in the Government free from all encumbrances until the Collector after making the award under Section 11 takes possession of the land, it can be said that a purchaser after notification under Section 4 or even declaration under Section 6 can be a 'person interested'. If, however, the owner had the notice of the notification under Section 4 or the declaration under Section 6 and he sold the land concealing this information, he would not create in the purchaser a right to seek a de novo hearing under Section 5-A. Such a purchaser, therefore, may be found to be a stranger, who would be raising a controversy as to the objections which were to be raised by the owner under Section 5-A. He, however, shall still have the locus standi as a 'person interested' to object to the award until the proceeding reached the stage of reference under Section 18. Beyond Section 18 reference also, there can be a third party right, but that will be for the purpose of Section 30 only as to apportionment of the amount of compensation. In these cases, the Court shall not be wrong in asking the petitioner-purchaser how he claimed any right in the property acquired and refusing to interfere with the notification for the reason that the vendor could not create a right in the vendee that stood extinguished after the expiry of the statutory period of 30 days from the date of the publication of the notification under Section 4. A notification, however, may be found to have been issued in violation of such mandates of law, which unless complied with, would render the notification void ab initio. Determination of such a question will be done sometimes on pure reading of the law and some times on pure facts alleged in the petition. If facts which go to the root and upon which the jurisdiction to proceed under the Act, depends, are found non-existing, all acts done under the Act would be without jurisdiction."

The Full Bench aforesaid was of the considered opinion that the purchaser of the property, after notification under Section 4(1) of the

Act or even declaration under Section 6 of the Act, can be a person interested and the nature of his right to object would depend on the stage of proceeding at which he comes into picture. In **COLLECTOR OF BOMBAY Vs. NUSSERWANJI** while dealing with "interest" it was held by the Apex Court :

> "…..In its normal acceptation "interest" means one or more of those rights which go to make up "ownership". The word "interest" in the section must, in the context, be construed ejusdem generis with "estates" etc., as meaning right over lands, of the character of, but not amounting to an estate, and cannot include the prerogative right to assess the lands. It must accordingly be held that the effect of the land acquisition proceedings is only to extinguish the rights of the occupants in the lands and to vest them absolutely in the Government, the right of the latter to levy assessment is not the subject matter of those proceedings, and if after the award the lands were not assessed to revenue, it was because there could be no question of the Government levying assessment on its own lands."

In **SUNDERLAL Vs. PARAMSUKHDAS** it was held :

> "The definition of 'person interested' is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded.
>
> A person claiming an interest in compensation is entitled to be heard under Sections 20 and 21. The provisions of the Act including Sections 20 and 21, do not prescribe that his claim to an interest in compensation should be "as compensation". This is really a contradictory statement. For a fortiori he has no interest in land, and compensation is given for interest in land. He can never claim compensation qua compensation for what he claims is an interest in the compensation to be awarded. This is not to say that a person claiming an interest in

compensation may not claim that the compensation awarded for the acquired land is low, if it affects his interests".

The meaning of the expression "person interested" had been explained in **A.S.L.A. OFFICER Vs. B.F. AHMED** and also by a Full Bench in **GUJARAT HOUSING BOARD Vs. NAGAHJIBHAI .** In **UNION OF INDIA Vs. SHIVKUMAR BHARGAVA** the Apex Court while dealing with the scheme by the Government to allot alternative sites to the owners of the land where a person purchased the land after date of notification, held that such person is not the owner for the purpose of allotment but however the person who purchased the land subsequent to the notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had, but he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which notification under Section 4(1) of the Act was published.

In **LAXMANRAO KRISTRAO Vs. PROVINCIAL GOVERNMENT OF BOMBAY** it was held that where notice was served on occupier but not on the person interested award under Section 12 of the Act cannot be challenged unless it is alleged and proved that omission was willful, perverse or fraudulent. In **OSURI SATYAVATHAMMA Vs. THE COLLECTOR, EAST GODAVARI DISTRICT** where notices under Sections 9 and 10 of the Act were not

served on the person in occupation of the land acquired and the land revenue receipts showing that such person was not paying revenue and no malafides can be attributed to the authorities in not serving notice under Sections 9 and 10 of the Act, the acquisition was held to be valid. In **VAJJA KOTESWARA RAO Vs. THE GOVT. OF A.P.** where the name of the owner of the land said to be acquired was not mentioned in notification under Section 4(1) of the Act and notice under Section 6 of the act was not issued to such persons before passing award it was held that the acquisition is not invalid but the award passed against such person is invalid. In **COLLECTOR, CUTTACK Vs. MAVADHAR** a Full Bench of Orissa High Court came to the conclusion that the provisions of Section 9(3) of the Act as to notices are only directory and non-compliance or imperfect compliance with it does not make the proceeding of the Collector invalid nor does it render the award ultimately passed under Section 11 of the Act a valid one. In **UGGAR SEN Vs. UNION OF INDIA** the Delhi High Court after referring to a decision of this Court in **VELAGAPUDI KANAKA DURGA Vs. DISTRICT COLLECTOR** held that non-service of notice under Sections 9 and 10 of the Act is bad only if the petitioner suffers some loss or harm. In **RAJINDERJIT Vs. STATE OF PUNJAB** it was held that provisions of Section 9(3) of the Act are mandatory and where notice was not issued on occupiers, the award passed by Collector is liable to be quashed. In

**MOHAMADSARIF Vs. STATE** Section 9(3) of the Act was held to be mandatory and non-compliance thereof will render the award not binding on the persons concerned. In **MANAGING DIRECTOR, APSRTC Vs. KAMALAKUMARI** a Division Bench of this Court while dealing with non-service of notice on the owners in person held :

> "Admittedly as reflected from the original records, the award enquiry notice was not served on the owners in person. In that view of the matter, it was permissible for the land acquisition authorities to resort to affixation of the notice as provided under sub-section (3) of Section 45 of the Act. But, quite curiously, instead of affixing the notices on the doors of the houses/huts of the land owners, such notices were claimed to have been affixed on a pole erected in the site. Therefore, it cannot be said that the provisions of Section 9(3), 10 and Section 45 of the Act are complied with by the land acquisition authority. The award is set aside."

In **KANNIAMMAL Vs. STATE OF TAMIL NADU** while dealing with compliance of Section 9(2) and (3) of the Act, the same view had been expressed. In **VENKATARAMA IYER Vs. COLLECTOR OF TANJORE** a Division Bench of the Madras High Court held that under Section 9(3) of the Act the occupier of the land concerning which public notice has been given under Clause (1) of Section 9 of the Act is entitled to such notice as will give him in the same manner as the person mentioned in Section 9(2), 15 days interval to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation and where the notification under Section 9(3) of the Act does not give the claimant a 15 days

notice as required, it amounts to “sufficient cause” within the meaning of Section 25(3) of the Act for the claimant’s omitting to make a claim and he thereby escapes the stringent provisions of Section 25(2) of the Act. In **REVENUE DIVISIONAL OFFICER Vs. A.N. DAMODARA MUDALIAR** a Division Bench of Madras High Court relying on the decision referred (23) supra held :

> “Natural justice requires that any notice to be effective and to be positive, should have been served on the person against whom it is intended and without proof of such actual service of such notice, a bare inference of constructive knowledge of the obligation to prefer the claim within 15 days from the date of the notice, ought not to be pressed into service to the prejudice of the affected party. Reading Section 9(2) and 9(3) together the intendment of the prescription and mandate in sub-section (2) of Section 9 of the Act is to see that the notice under Section 9(2) as in Section 9(3) should also be served on the persons affected and that ought to be the date which has to be reckoned for purpose of calculating the 15 days time available to the claimant for preferring his objections under the above sub-section. The prescription in Section 9(2) of the Act read in conjunction with the well-known principles of natural justice, requires that it is the date of service of a statutory notice in any enactment which ought to be relevant factor to consider whether the subsequent conduct of the addressee is in accordance with the statute or not. Thus the date of the public notices alone cannot govern the situation. But it is the date of service of such notices which is the essential criteria to consider whether the claimants have acted in accordance with the statute or not”.

On a careful scrutiny of the precedent law on the subject referred to supra and in the light of the binding decisions of this Court referred (1), (2), (3) and (21) supra, it is to be held that the service of notice under Section 9(3) of the Act is to be held to be mandatory

especially keeping in view the object of the provisions of the Act.

As can be seen from the prayer in the Writ Petition and the averments made in the affidavit filed in support of the Writ Petition and the stand taken by the respondents in the counter affidavit, there is some controversy relating to the sub-division of Survey Number in question. The extent of land covered by the sale deed in question is not in controversy. Except for the stand taken in the counter affidavit relating to the discrepancy in the sub-division, on the facts of the present case though the writ petitioner is a subsequent purchaser in view of the fact that notice under Section 9(3) of the Act is mandatory, the writ petitioner is entitled to such notice. In the light of the stand taken in the counter affidavit and taking into consideration the peculiar facts of the case, the 2nd respondent is directed to enquire into the identity of the property acquired and covered by the sale deed by virtue of which the writ petitioner purchased the property since the writ petitioner had stepped into the shoes of the original owner after putting the writ petitioner and also the vendor of the writ petitioner on notice if the 2nd respondent so requires and on being satisfied about the same to further proceed with after serving notice under Section 9(3) of the Act as per the provisions of the Act. This exercise shall be completed by the 2nd respondent at an early date and at any rate preferably within a period of three months from the date of receipt of the order. It is made clear that till then status-quo

existing as on today shall be maintained.

The Writ Petition is accordingly disposed of. No order as to costs.

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P.S.Narayana.,J

Date : -1-2005

L.R. copy to be marked : YES / NO

**To:**

One fair copy to the Hon'ble Sri Justice P.S. Narayana for his Lordship's kind perusal

**1** The District Collector,
Srikakulam.
2 The Revenue Divisional Officer,
Tekkali, Srikakulam.
3 The Mandal Revenue Officer,
Tekkali, Srikakulam.

4. 2 C.Cs. to Government Pleader for Land Acquisition,

High Court Buildings,

High Court of A.P.

Hyderabad (OUT)

5. 2 C.Cs. to Government Pleader for Revenue,

High Court Buildings,

High Court of A.P.

Hyderabad (Out)

6. 2 C.D. copies

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8. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

9. The Secretary, A.P. Advocates Association Library, High Court of A.P., Hyderabad.